6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA-HQ-OAR-2010-0280; FRL-9714-4]

RIN: 2060-AR41

Protection of Stratospheric Ozone: The 2013 Critical Use Exemption from the Phaseout of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing uses that qualify for the 2013 critical use exemption. EPA is also proposing to amend the regulatory framework to determine the amount of methyl bromide that may be produced, imported, or supplied from existing pre-phaseout inventory for those uses in 2013. EPA is taking action under the authority of the Clean Air Act to reflect a recent consensus decision taken by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer at the Twenty-Third Meeting of the Parties. EPA is seeking comment on the list of critical uses and on EPA's determination of the specific amounts of methyl bromide that may be produced and imported, or sold from pre-phaseout inventory for those uses.

DATES: Comments must be submitted by **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. Eastern Standard Time on **[INSERT DATE 5 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL**

REGISTER]. If a hearing is requested it will be held on **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. EPA will post information regarding a hearing, if one is requested, on the Ozone Protection website www.epa.gov/ozone/strathome.html. Persons interested in attending a public hearing should consult with the contact person below regarding the location and time of the hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA-HQ-OAR-2010-0280**, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Email: a-and-r-Docket@epa.gov
- Fax: (202) 566-9744
- Phone: (202) 566-1742
- U.S. Mail: Docket EPA-HQ-OAR-2010-0280, U.S. Environmental Protection Agency, EPA Docket Center, Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460
- Hand Delivery or Courier: Docket EPA-HQ-OAR-2010-0280, EPA Docket Center - Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2010-0280. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal

information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at http://www.epa.gov/epahome/dockets.htm.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30

a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742).

FOR FURTHER INFORMATION CONTACT: For further information about this proposed rule, contact Jeremy Arling by telephone at (202) 343-9055, or by e-mail at arling.jeremy@epa.gov or by mail at U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20460. You may also visit the methyl bromide section of the Ozone Depletion website of EPA's Stratospheric Protection Division at www.epa.gov/ozone/mbr for further information about the methyl bromide critical use exemption, other Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and related topics.

SUPPLEMENTARY INFORMATION: This proposed rule concerns Clean Air Act (CAA) restrictions on the consumption, production, and use of methyl bromide (a Class I, Group VI controlled substance) for critical uses during calendar year 2013. Under the Clean Air Act, methyl bromide consumption (consumption is defined under section 601 of the CAA as production plus imports minus exports) and production were phased out on January 1, 2005, apart from allowable exemptions, such as the critical use and the quarantine and preshipment (QPS) exemptions. With this action, EPA is proposing and seeking comment on the uses that will qualify for the 2013 critical use exemption as well as specific amounts of methyl bromide that may be produced and imported, or sold from pre-phaseout inventory (also referred to as "stocks" or "inventory") for proposed critical uses in 2013.

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I. General Information

A. Regulated Entities

Entities potentially regulated by this proposed action are those associated with the production, import, export, sale, application, and use of methyl bromide covered by an approved critical use exemption. Potentially regulated categories and entities include

producers, importers, and exporters of methyl bromide; applicators and distributors of methyl bromide; and users of methyl bromide that applied for the 2013 critical use exemption including growers of vegetable crops, fruits and nursery stock, and owners of stored food commodities and structures such as grain mills and processors. This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this proposed action. To determine whether your facility, company, business, or organization could be regulated by this proposed action, you should carefully examine the regulations promulgated at 40 CFR part 82, subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

B. What Should I Consider When Preparing My Comments?

1. *Confidential Business Information*. Do not submit confidential business information (CBI) to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date, and page number).

- Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. What Is Methyl Bromide?

Methyl bromide is an odorless, colorless, toxic gas which is used as a broad-spectrum pesticide and is controlled under the CAA as a Class I ozone-depleting substance (ODS). Methyl bromide was once widely used as a fumigant to control a variety of pests such as insects, weeds, rodents, pathogens, and nematodes. Information on methyl bromide can be found at http://www.epa.gov/ozone/mbr.

Methyl bromide is also regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and other statutes and regulatory authority, as well as by States under their own statutes and regulatory authority. Under FIFRA, methyl bromide is a restricted use pesticide. Restricted use pesticides are subject to Federal and

State requirements governing their sale, distribution, and use. Nothing in this proposed rule implementing the Clean Air Act is intended to derogate from provisions in any other Federal, State, or local laws or regulations governing actions including, but not limited to, the sale, distribution, transfer, and use of methyl bromide. Entities affected by this proposal must continue to comply with FIFRA and other pertinent statutory and regulatory requirements for pesticides (including, but not limited to, requirements pertaining to restricted use pesticides) when importing, exporting, acquiring, selling, distributing, transferring, or using methyl bromide for critical uses. The provisions in this proposed action are intended only to implement the CAA restrictions on the production, consumption, and use of methyl bromide for critical uses exempted from the phaseout of methyl bromide.

III. What Is the Background to the Phaseout Regulations for Ozone-Depleting Substances?

The regulatory requirements of the stratospheric ozone protection program that limit production and consumption of ozone-depleting substances are in 40 CFR part 82, subpart A. The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing and subsequent ratification of the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol). The Montreal Protocol is the international agreement aimed at reducing and eliminating the production and consumption of stratospheric ozone-depleting substances. The United States was one of the original signatories to the 1987 Montreal Protocol and the United States ratified the Protocol on April 12, 1988. Congress then enacted, and President George H.W. Bush signed into law, the Clean Air Act

Amendments of 1990 (CAAA of 1990) which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the United States could satisfy its obligations under the Protocol. EPA issued regulations to implement this legislation and has since amended the regulations as needed.

Methyl bromide was added to the Protocol as an ozone-depleting substance in 1992 through the Copenhagen Amendment to the Protocol. The Parties to the Montreal Protocol (Parties) agreed that each developed country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing a freeze on the level of methyl bromide production and consumption for developed countries. EPA published a final rule in the **Federal Register** on December 10, 1993 (58 FR 65018), listing methyl bromide as a Class I, Group VI controlled substance. This rule froze U.S. production and consumption at the 1991 baseline level of 25,528,270 kilograms, and set forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until 2001, when the complete phaseout would occur. This phaseout date was established in response to a petition filed in 1991 under sections 602(c)(3) and 606(b) of the CAAA of 1990, requesting that EPA list methyl bromide as a Class I substance and phase out its production and consumption. This date was consistent with section 602(d) of the CAAA of 1990, which, for newly listed Class I ozone-depleting substances provides that "no extension [of the phaseout schedule in section 604] under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances."

At the Seventh Meeting of the Parties (MOP) in 1995, the Parties made adjustments to the methyl bromide control measures and agreed to reduction steps and a 2010 phaseout date for developed countries with exemptions permitted for critical uses. At that time, the United States continued to have a 2001 phaseout date in accordance with section 602(d) of the CAAA of 1990. At the Ninth MOP in 1997, the Parties agreed to further adjustments to the phaseout schedule for methyl bromide in developed countries, with reduction steps leading to a 2005 phaseout. The Parties also established a phaseout date of 2015 for Article 5 countries.

IV. What Is the Legal Authority for Exempting the Production and Import of Methyl Bromide for Critical Uses Authorized by the Parties to the Montreal Protocol?

In October 1998, the U.S. Congress amended the Clean Air Act (CAA) to prohibit the termination of production of methyl bromide prior to January 1, 2005, to require EPA to bring the U.S. phaseout of methyl bromide in line with the schedule specified under the Protocol, and to authorize EPA to provide certain exemptions. These amendments were contained in Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105-277, October 21, 1998) and were codified in section 604 of the CAA, 42 U.S.C. 7671c. The amendment that specifically addresses the critical use exemption appears at section 604(d)(6), 42 U.S.C. 7671c(d)(6). EPA revised the phaseout schedule for methyl bromide production and consumption in a direct final rulemaking on November 28, 2000 (65 FR 70795), which allowed for the reduction in methyl bromide consumption specified under the Protocol and extended the phaseout to 2005 while creating a placeholder for critical use exemptions. EPA again amended the

regulations to allow for an exemption for quarantine and preshipment (QPS) purposes through an interim final rule on July 19, 2001 (66 FR 37751), and a final rule on January 2, 2003 (68 FR 238).

On December 23, 2004 (69 FR 76982), EPA published a final rule (the "Framework Rule") that established the framework for the critical use exemption, set forth a list of approved critical uses for 2005, and specified the amount of methyl bromide that could be supplied in 2005 from stocks and new production or import to meet the needs of approved critical uses. EPA subsequently published rules applying the critical use exemption framework for each of the annual control periods from 2006 to 2012. Under authority of section 604(d)(6) of the CAA, today's action proposes the uses that will qualify as approved critical uses in 2013 and the amount of methyl bromide that may be produced, imported, or supplied from inventory to satisfy those uses.

This proposed action on critical uses for 2013 reflects Decision XXIII/4, taken at the Twenty-Third Meeting of the Parties in November 2011. In accordance with Article 2H(5), the Parties have issued several Decisions pertaining to the critical use exemption. These include Decisions IX/6 and Ex. I/4, which set forth criteria for reviewing proposed critical uses. The status of Decisions is addressed in NRDC v. EPA, (464 F.3d 1, D.C. Cir. 2006) and in EPA's "Supplemental Brief for the Respondent," filed in NRDC v. EPA and available in the docket for this action. In this proposed rule on critical uses for 2013, EPA is honoring commitments made by the United States in the Montreal Protocol context.

V. What is the Critical Use Exemption Process?

A. Background of the Process

The critical use exemption is designed to permit the production and import of methyl bromide for uses that do not have technically and economically feasible alternatives that are acceptable from the standpoint of environment and health and for which the lack of methyl bromide would result in significant market disruption (40 CFR 82.3). Article 2H of the Montreal Protocol established the critical use exemption provision. At the Ninth Meeting of the Parties (1997), the Parties established the criteria for an exemption in Decision IX/6. In that Decision, the Parties agreed that "a use of methyl bromide should qualify as 'critical' only if the nominating Party determines that: (i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and (ii) there are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and public health and are suitable to the crops and circumstances of the nomination." These criteria are reflected in EPA's definition of "critical use" at 40 CFR 82.3. In addition, the Parties decided that production and consumption, if any, of methyl bromide for critical uses should be permitted only if a variety of conditions have been met, including that all technically and economically feasible steps have been taken to minimize the critical use and any associated emission of methyl bromide, that research programs are in place to develop and deploy alternatives and substitutes, and that methyl bromide is not available in sufficient quantity and quality from existing stocks of banked or recycled methyl bromide.

In response to EPA's request for critical use exemption applications published in the **Federal Register** on July 15, 2010 (75 FR 41177), applicants provided data on the technical and economic feasibility of using alternatives to methyl bromide. Applicants

also submitted data on their use of methyl bromide, ongoing research programs into the use of alternatives to methyl bromide in their sector, and efforts to minimize use and emissions of methyl bromide.

EPA reviews the data submitted by applicants, as well as data from governmental and academic sources, to establish whether there are technically and economically feasible alternatives available for a particular use of methyl bromide, and whether there would be a significant market disruption if no exemption were available. In addition, an interagency workgroup reviews other parameters of the exemption applications such as dosage and emissions minimization techniques and applicants' research or transition plans. This assessment process culminates in the development of a document referred to as the U.S. critical use nomination (CUN). Since 2003, the U.S. Department of State has submitted a CUN annually to the United Nations Environment Programme (UNEP) Ozone Secretariat. The Methyl Bromide Technical Options Committee (MBTOC) and the Technology and Economic Assessment Panel (TEAP), which are advisory bodies to Parties to the Montreal Protocol, review each Party's CUN and make recommendations to the Parties on the nominations. The Parties then take Decisions to authorize critical use exemptions for particular Parties, including how much methyl bromide may be supplied for the exempted critical uses. As required in section 604(d)(6) of the CAA, for each exemption period, EPA consults with the United States Department of Agriculture (USDA) and other departments and institutions of the Federal government that have regulatory authority related to methyl bromide, and provides an opportunity for public comment on the amounts and specific uses of methyl bromide that the agency is proposing to exempt.

On February 4, 2011, the U.S. Government (USG) submitted the ninth *Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America* to the Ozone Secretariat of UNEP. This nomination contained the request for 2013 critical uses. In February 2011, MBTOC sent questions to the USG concerning technical and economic issues in the 2013 nomination. The USG transmitted responses to MBTOC in February, 2011. These documents, together with reports by the advisory bodies noted above, are in the public docket for this rulemaking. The proposed critical uses and amounts reflect the analysis contained in those documents.

B. How Does This Proposed Rule Relate to Previous Critical Use Exemption Rules?

The December 23, 2004, Framework Rule (69 FR 76982) established the framework for the critical use exemption program in the United States, including definitions, prohibitions, trading provisions, and recordkeeping and reporting obligations. The preamble to the Framework Rule included EPA's determinations on key issues for the critical use exemption program.

Since publishing the Framework Rule, EPA has annually promulgated regulations to exempt specific quantities of production and import of methyl bromide, to determine the amounts that may be supplied from pre-phaseout inventory, and to indicate which uses meet the criteria for the exemption program for that year. See 71 FR 5985 (February 6, 2006), 71 FR 75386 (December 14, 2006), 72 FR 74118 (December 28, 2007), 74 FR 19878 (April 30, 2009), 75 FR 23167 (May 3, 2010), 76 FR 60737 (September 30, 2011), and 77 FR 29218 (May 17, 2012).

Today's action proposes to amend the regulatory framework to determine the amounts of Critical Use Allowances (CUAs) and Critical Stock Allowances (CSAs) to be

allocated for critical uses in 2013. A CUA is the privilege granted through 40 CFR part 82 to produce or import 1 kg of methyl bromide for an approved critical use during the specified control period. These allowances expire at the end of the control period and, as explained in the Framework Rule, are not bankable from one year to the next. The proposed CUA allocation is subject to the trading provisions at 40 CFR 82.12, which are discussed in section V.G. of the preamble to the Framework Rule (69 FR 76982).

A CSA is the right granted through 40 CFR part 82 to sell 1 kg of methyl bromide from inventory produced or imported prior to the January 1, 2005, phaseout date for an approved critical use during the specified control period. The Framework Rule established provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of CSAs and a prohibition on the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. It also established trading provisions that allow CUAs to be converted into CSAs.

C. Stocks of Methyl Bromide

An approved critical user may purchase methyl bromide produced or imported with CUAs, as well as limited inventories of pre-phaseout methyl bromide, the combination of which constitute the supply of "critical use methyl bromide" intended to meet the needs of approved critical uses. EPA considers all pre-phaseout inventory to be suitable for both pre-plant and post harvest uses. The aggregate amount of pre-phaseout methyl bromide reported as being in inventory at the beginning of 2012 is 1,248,876 kg. This amount does not include critical use methyl bromide that was produced after January 1, 2005, and carried over into subsequent years. Nor does it include methyl bromide produced 1) under the quarantine and preshipment (QPS) exemption, 2) with

Article 5 allowances to meet the basic domestic needs of Article 5 countries, or 3) for feedstock or transformation purposes. As in prior years, the Agency will continue to closely monitor CUA and CSA data. As stated in the final 2006 CUE Rule, if an inventory shortage occurs, EPA may consider various options including authorizing the conversion of a limited number of CSAs to CUAs through a rulemaking, bearing in mind the upper limit on U.S. production/import for critical uses. In sections V.D. and V.G. of this preamble, EPA seeks comment on the amount of critical use methyl bromide to come from inventory compared to new production and import.

As explained in the 2008 CUE Rule, the agency intends to continue releasing aggregate methyl bromide inventory information reported to the agency under the reporting requirements at 40 CFR 82.13 at the end of each control period. EPA notes that if the number of competitors in the industry were to decline appreciably, EPA would revisit the question of whether the aggregate is entitled to treatment as confidential information and whether to release the aggregate without notice. EPA is not proposing to change the treatment of submitted information but welcomes information concerning the composition of the industry in this regard. The aggregate information for 2003 through 2012 is available in the docket for this rulemaking.

D. Proposed Critical Uses

In Decision XXIII/4, taken in November 2011, the Parties to the Protocol agreed "to permit, for the agreed critical-use categories for 2013 set forth in table A of the annex to the present decision for each party, subject to the conditions set forth in the present decision and in decision Ex.I/4 to the extent that those conditions are applicable, the

levels of production and consumption for 2013 set forth in table B of the annex to the present decision which are necessary to satisfy critical uses …"

The following uses are those set forth in table A of the annex to Decision XXIII/4 for the United States:

- Commodities
- Mills and food processing structures
- Dried cured pork
- Cucurbits
- Eggplant – field
- Nursery stock – fruit, nuts, flowers
- Orchard replants
- Ornamentals
- Peppers – field
- Strawberry – field
- Strawberry runners
- Tomatoes – field

EPA is seeking comment on the technical analysis contained in the U.S. nomination (available for public review in the docket to this rulemaking), and seeks information regarding any changes to the registration (including cancellation or new registrations), use, or efficacy of alternatives that have transpired after the 2013 U.S. CUN was forwarded. EPA recognizes that as the market for alternatives evolves, the thresholds for what constitutes "significant market disruption" or "technical and economic feasibility" may change. Comments on technical data contained in the CUN, or new information, could potentially alter the agency's analysis on the uses and amounts of methyl bromide qualifying for the critical use exemption. The agency may, in response to new information, reduce the proposed quantities of critical use methyl bromide, or decide not to approve uses authorized by the Parties. However, the agency will not increase the quantities or add new uses in the final rule beyond those authorized by the Parties.

EPA is also proposing to modify the table in 40 CFR part 82, subpart A, appendix L to reflect the agreed critical use categories identified in Decision XXIII/4. The agency is amending the table of critical uses and critical users based in part on the technical analysis contained in the 2013 U.S. nomination that assesses data submitted by applicants to the CUE program. First, EPA is proposing to remove two users who did not submit applications and therefore were not included in the U.S. nomination. These users are California rose nursery growers and Maryland tomato growers.

Second, EPA is proposing to remove the National Pest Management Association (NPMA) food processing use from the list for 2013. The NPMA did not initially apply to be a critical user in 2013 and the Parties have not authorized a critical use for this purpose for 2013. Members of the NPMA have worked to transition from methyl bromide to alternative practices and alternative fumigants like sulfuryl fluoride. In January 2004, EPA registered the first food uses of sulfuryl fluoride for control of insect pests in grain processing facilities and in harvested and processed food commodities such as cereal grains, dried fruits, and tree nuts. In July 2005, EPA approved sulfuryl fluoride for treatment of additional harvested and processed food commodities such as coffee and cocoa beans, and for fumigation of food handling and processing facilities.

On January 19, 2011, EPA proposed to revoke the residue limits on food, known as tolerances, for fluoride on the food commodities approved for treatment with sulfuryl fluoride (76 FR 3422). In response to this proposal, the NPMA submitted a supplemental request for 2013 during the open period for 2014 applications. The USG did not include NPMA's supplemental request in the 2014 nomination submitted to UNEP on January 31, 2012, because EPA has only proposed to revoke the tolerances for sulfuryl fluoride

and has not taken action in any final rule. U.S. critical use nominations have been based on final decisions about alternatives. Additionally, the proposed tolerance revocation rule includes a staggered implementation scheme, making it unlikely that any specific revocation will be effective in 2013. Therefore, EPA is not proposing NPMA as a critical use in 2013.

Third, EPA is proposing to remove sectors or users that applied for a critical use in 2013 but that the United States did not nominate for 2013. EPA conducted a thorough technical assessment of each application and considered the effects that the loss of methyl bromide would have for each agricultural sector, and whether significant market disruption would occur as a result. As a result of this technical review, the U.S. Government did not find that certain sectors or users met the critical use criteria in Decision IX/6 and they were therefore not included in the 2013 Critical Use Nomination. EPA notified these sectors of their status in July 2011. These sectors are: members of the Southeastern Cucurbit Consortium and cucurbit growers in Maryland and Delaware; growers in the forest nursery sector (Southern Forest Nursery Management Cooperative, Northeastern Forest and Conservation Nursery Association, and Michigan seedling growers); members of the Southeastern Pepper Consortium; members of the Southeastern Strawberry Consortium and Florida strawberry growers; California sweet potato slip growers; members of the Southeastern Tomato Consortium and Virginia tomato growers. For each of these uses, EPA found that there are technically and economically feasible alternatives to methyl bromide.

Finally, EPA is proposing to limit the CUE for cucurbit, eggplant, pepper, and tomato sectors in Georgia to small growers. The EPA review of the available information

for Georgia indicates that farmers growing fewer than 10 acres of these crops need an additional year to successfully transition to the alternatives. These small growers do not have as much experience with the alternatives and need to convert their equipment to the University of Georgia (UGA) "3-Way" mixture (a combination of 1,3-dichloropropene, chloropicrin, and metam). The EPA conducted an economic assessment of small growers' ability to convert their equipment (see revised nomination, dated July 15, in the docket). The assessment demonstrates that despite the UGA 3-Way mixture being more affordable than methyl bromide plus chloropicrin on a per acre basis, retrofitting farm equipment to use the UGA 3-Way mixture at a cost of $3,450 is not affordable for growers under four acres, amortized over 10 years at 7% interest (7% is a home equity loan rate for this region at the time the nomination was submitted; interest on agricultural loans could be lower). However, due to variations in impacts for individual growers and uncertainties in the assumptions used in the economic analysis, farms smaller than 10 acres are reasonably expected to incur negative impacts from having to covert to the UGA 3-Way mixture. Therefore, EPA is proposing to limit the Georgia cucurbit, eggplant, pepper, and tomato critical uses to small growers, which EPA is proposing to define as growers growing fewer than 10 acres. EPA seeks comment on these proposed changes to Appendix L.

EPA is not proposing other changes to the table but is repeating the following clarifications made in previous years for ease of reference. The "local township limits prohibiting 1,3-dichloropropene" are prohibitions on the use of 1,3-dichloropropene products in cases where local township limits on use of this alternative have been reached. In addition, "pet food" under subsection B of Food Processing refers to food for

domesticated dogs and cats. Finally, "rapid fumigation" for commodities is when a buyer provides short (two working days or fewer) notification for a purchase or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives.

E. Proposed Critical Use Amounts

Table A of the annex to Decision XXIII/4 lists critical uses and amounts agreed to by the Parties to the Montreal Protocol. When added together, the total authorized critical use for 2013 for the United States is 562,326 kilograms (kg), which is equivalent to 2.2% of the U.S. 1991 methyl bromide consumption baseline of 25,528,270 kg. The maximum amount of new production and import for U.S. critical uses, specified in Table B of Decision XXIII/4, is 562,326 kg, minus available stocks. In previous years, the maximum amount of new production has been less than the total authorization, with the difference representing the minimum amount that the Parties expect to be used from pre-phaseout inventory. For 2013 the Parties indicated that the United States should use "available stocks," but unlike previous years, Decision XXIII/4 did not indicate a minimum amount expected to be taken from stocks. Consistent with EPA's past practice, and our commitments to the Parties, EPA is considering the level of "available stocks" that may be allocated in this rulemaking. However, EPA is seeking comment on changing the approach for determining the availability of stocks in this rule.

As established in earlier rulemakings, EPA views the determination of the total allocation, up to the amount authorized by the Parties, as an appropriate exercise of discretion. The Agency may decide to allocate less than the full amount authorized by the Parties, and in past CUE rules EPA has made reductions to the total allocation after

considering several factors, including new data on alternatives, such as the registration of a new alternative not considered when the CUN was submitted to UNEP, and carryover from prior years. For 2013, EPA does not have new data regarding the uptake of new alternatives. However, iodomethane, an alternative that was available when the CUN was submitted, is no longer available. EPA believes this is an important factor that should be considered in determining the total amount of the allocation; however, because of the schedule for consideration under the Montreal Protocol, the timing of withdrawal complicates any recognition by the Parties of this development for 2013. In addition, as detailed below, carryover for 2012 is zero and EPA is not proposing reductions on that basis. EPA is therefore proposing to allocate 562,326 kg, the full amount authorized by the Parties, in particular due to the loss of iodomethane. EPA welcomes comment on the proposed levels of exempted new production and import for critical uses and the amount of material that may be sold from pre-phaseout inventory for critical uses.

1. Approach for Determining Critical Stock Allowances

EPA is proposing a new approach for determining the amount of CSAs and CUAs to allocate. EPA is proposing to calculate "available stocks" as a percentage of the existing inventory, as was reported to EPA on January 1, 2012. Under this approach, EPA is soliciting comment on two different amounts of "available stocks", and thus two different possible allocations of CSAs. EPA is also soliciting comment on a separate approach that would continue to use the framework methodology to calculate the amount of "available stocks" by estimating drawdown during 2012 and providing for a supply chain factor for 2013. As noted above, EPA is proposing to not reduce the critical use

authorization of the Parties, and thus is proposing that any authorized amount not allocated as CSAs be allocated as new production and import allowances.

In past CUE allocation rules, EPA allocated CSAs in amounts that represented not only the difference between the total authorized CUE amount and the amount of authorized new production and import but also an additional amount to reflect available stocks. After determining the CSA amount, EPA determined the portion of CUE methyl bromide to come from new production and import such that the total amount of methyl bromide exempted for critical uses did not exceed the total amount authorized by the Parties for that year.

EPA views the decision whether to include these additional amounts in the calculation of the year's overall CSA level as an appropriate exercise of discretion. The Agency is not required to allocate the full amount of authorized new production and consumption. The Parties only agree to "permit" a particular level of production and consumption; they do not – and cannot – mandate that the United States authorize this level of production and consumption domestically. Nor does the CAA require EPA to allow the full amount permitted by the Parties. Section 604(d)(6) of the CAA does not require EPA to exempt any amount of production and consumption from the phaseout, but instead specifies that the Agency "may" create an exemption for critical uses, providing EPA with substantial discretion.

When determining the CSA amounts, EPA considers what portion of existing stocks would be "available" for critical uses during that control period. The Parties to the Protocol recognized in their Decisions that the level of existing stocks may differ from the level of available stocks. Decision XXIII/4 states that "production and consumption

of methyl bromide for critical uses should be permitted only if methyl bromide is not available in sufficient quantity and quality from existing stocks…" In addition, earlier Decisions refer to the use of "quantities of methyl bromide from stocks that the Party has recognized to be available." Thus, it is clear that individual Parties have the ability to determine their level of available stocks. Decision XXIII/4 further reinforces this concept by including the phrase "minus available stocks" as a footnote to the United States' authorized level of production and consumption in Table B. Section 604(d)(6) of the CAA does not require EPA to adjust the amount of new production and import to reflect the availability of stocks; however, as explained in previous rulemakings, making such an adjustment is a reasonable exercise of EPA's discretion under this provision.

In recent CUE rules, EPA has calculated the amount of "available stocks" using a formula adopted in the 2008 CUE rule: $AS_{CP} = ES_{PP} – D_{PP} – SCF_{CP}$, where AS_{CP} would be the available stocks on the first day of the control period; ES_{PP} would be the existing pre-phaseout stocks of methyl bromide held in the United States by producers, importers, and distributors on the first day of the prior control period; D_{PP} would be the estimated drawdown of existing stocks during the prior control period; and SCF_{CP} would be the supply chain factor for the control period. In the section below, EPA is taking comment on using this approach, and is alternatively proposing a new approach, for determining the amount of available stocks.

Option 1: Percentage of Existing Inventory

For 2013, EPA is proposing a new approach that would allocate critical stock allowances in an amount equal to a percentage of the existing inventory. Under this approach, EPA proposes to calculate "available stocks" as a percentage of the existing

inventory, as was reported to EPA on January 1, 2012. EPA is considering alternate approaches for allocating critical stock allowances because the old approach, discussed as option 2 below, may be increasingly inaccurate as the amount of inventory declines, overly complex, and contributing to delay in issuing the final critical use exemption. Furthermore, EPA believes that efforts to in estimate available inventory may be further complicated for 2013 by the recent withdrawal of iodomethane from the market.

In the 2012 Final Rule, EPA recognized "that its estimates [of available stocks] have become increasingly inexact in characterizing actual drawdown of pre-phaseout inventory, as the amounts in inventory have declined over time. EPA intends to consider the adequacy of using this formula to assess 'available stocks' in a future action." Initially, the drawdown estimate was a simple linear model based on past years' rates. EPA modified the approach when it became apparent that the inventory drawdown was decreasing exponentially rather than linearly. EPA noted in the 2009 CUE Rule that the rate of drawdown was based mostly on the business decisions of the companies that hold pre-phaseout inventory, and included aspects that are difficult for EPA to know or quantify, such as honoring long-term relationships with non-CUE customers or holding inventory in response to price fluctuations. To refine the analysis in subsequent rules EPA separately analyzed the use of inventory on critical uses, for which there are a set number of allowances, and non-critical uses, for which there are not. This approach is discussed in more detail below.

Despite increased specificity, precise estimates still proved elusive. In successive years, EPA substantially overestimated inventory drawdown. Most recently, in the 2012 Rule, EPA estimated a drawdown of 1,110,633 kg, when the actual drawdown was half

that amount, or 556,794 kg. The results of the methodology using the updated data were sufficiently different that EPA considered providing additional notice and the opportunity to comment to incorporate them into the final allocation rule. EPA is concerned that as the total amount of both the U.S. authorization and the pre-phaseout stocks become smaller, efforts to perfect EPA estimates in this area will delay needed rulemaking.

Moreover, EPA believes that the fact that its projections consistently over-estimate the amount of inventory that will be drawn down is evidence that EPA has been substantially over-estimating the availability of pre-phaseout stocks. EPA has received comments in past rulemakings that existing inventory was not actually available to users because of reductions in the number of distributors, and decisions by distributors not to sell inventory. While EPA believes it is appropriate to rely on market flexibility and efficiency to distribute existing stocks of inventory, EPA recognizes that the data appear to show that inventory is less "available" than was estimated under EPA's prior approach.

EPA believes problems with the existing formula may also become worse due to a recent change in the geographic distribution of critical users. In the past, EPA has considered all pre-phaseout inventory to be available to all users, regardless of location. This assumption, as discussed in the 2009 CUE rule (74 FR 19887, April 30, 2009), was based on the fact that inventory is held in California and the Southeast, as well as other locations around the country. While the geographic distribution of inventory generally remains the same, the authorized critical uses have shifted to California over the last two years. In the 2011 control period, 49% of the total authorization was for pre-plant uses in

California and 38% was for pre-plant uses in the Southeast. In 2013, this ratio will be 91% and 4% respectively.[1]

EPA believes that inventory held in the Southeast may not be equally available to critical users in California. Stakeholders have told EPA that distributors do not ship pre-phaseout inventory to buyers across the country. Unlike newly produced or imported material which enters nationwide distribution networks, inventory is mostly held by regional distributors. In addition, those distributors typically sell both the gas and the application services together. Distributors would therefore incur additional expense to ship material without being able to charge for performing the application. EPA specifically encourages comment on the question of whether inventory held in one part of the country has been, or can be, transported to critical uses in another part of the country.

Another reason EPA is proposing to allocate critical stock allowances equal to a percentage of the existing inventory is that EPA believes this method will be easier to calculate and will help streamline the issuance of the CUE allocation rule. EPA has received comment in the past few CUE Rules that the agency should find ways to issue the allocation rulemakings before the start of the control period. In the 2012 CUE final rule, EPA stated that the agency "will consider means of streamlining the Critical Use Exemption rulemaking in the future so that the rule can be issued prior to the start of the control period." Absent that, EPA will seek to issue a final rule as soon into the control period as possible. EPA is concerned that efforts to correct estimates and incorporate the

[1] EPA treats company-specific methyl bromide inventory information as confidential and believes that disaggregating the inventory data by geographic area could potentially reveal CBI. EPA solicits comment on this issue but is not proposing at this time to release data showing how much inventory is located in or near California. However, even in the absence of specific inventory data broken down by region, EPA believes that the fact that over 90% of critical use is in California is relevant to judging the availability of existing stocks.

most recent data into the calculation of the supply chain factor and the rest of the formula will further delay future CUE rules. EPA recognized in the 2012 Rule that "the time-sensitive need for a CUE authorization for the current calendar year and concluded that re-opening the allocation for comment is not warranted." EPA believes that its prior formula may have attempted to achieve greater precision than was possible or needed, especially in light of the continued reduction in both inventory and annual authorizations for critical uses. Thus, EPA is considering an alternate approach, which provides a greater likelihood of expediting the rulemaking process. EPA will continue to consider other possible means of streamlining the CUE rulemaking process in the future.

As part of this approach, EPA would end its use of the supply chain factor (SCF) [2]. Because this approach does not use the available stocks calculation developed in the 2008 CUE Rule to determine the amount of available stocks for use by critical users in 2013, calculation of the SCF is unnecessary. EPA notes that the entire critical use exemption authorized by the Parties for 2013 is 562 MT, which is substantially less than the existing inventory. EPA believes that, although portions of the existing inventory may not practically be available under usual circumstances (e.g., because it may be located in the Southeast and not California), users may be able to access greater amounts of inventory in the event of extraordinary circumstances such as a catastrophic domestic production failure.

In addition to soliciting comment on this approach to calculating CSAs, EPA is also soliciting comment on the specific amount of inventory to be allocated. EPA is proposing to allocate CSAs equal to 5% of the January 1, 2012, reported inventory.

[2] The purpose, and calculation, of the supply chain factor is discussed in greater detail below, and in prior CUE notices.

Alternatively, EPA is also taking comment on not allocating any CSAs for 2013 under this approach in light of the effect that the withdrawal of iodomethane may have on the demand for inventory. The two options are discussed below.

EPA is proposing to allocate CSAs equal to 5% of the January 1, 2012, reported inventory. The inventory at that date was 1,248,876 kg. Therefore, under this approach, EPA would allocate 62,444 kg of critical stock allowances for 2013. Since 2006, the amount of prior year inventory used through the expenditure of CSAs has ranged from 8% to 26%. EPA believes that it would be appropriate to select a percentage that is below the historic range for several reasons. First, EPA wishes to ensure that the amount allocated for 2013 will be available to critical users in that year. As discussed above, the availability of existing inventory is becoming increasingly difficult to estimate as the amount declines. Although EPA is proposing to consider historic patterns of availability in considering how many CSAs to allocate, the fact that stocks in the Southeast may be unavailable as a practical matter for growers in California, while critical uses have recently become highly concentrated in California, suggests that, even under this approach, a conservative approach to estimating availability of inventory is warranted. As noted above, this issue is particularly important for 2013 because the unexpected withdrawal of iodomethane.

EPA believes it is reasonable to assume that 5% of existing inventory on January 1, 2012, could be available for critical users in 2013. Historically, the drawdown of inventory for all uses has never exceeded 42% of the prior year's inventory. Drawdown would have to be over twice that rate in 2012 for there to be less inventory in 2013 than the amount of the proposed CSA. Rather, EPA anticipates that the constraints on

drawdown discussed in prior rules (e.g. critical uses capped by allocation amounts, revised labeling removing uses, increased value of the material as supply decreases) will continue to limit the drawdown in 2012. At the same time, expenditure of CSAs have never amounted to less than 8% of inventory, and even if inventory was purchased for critical uses at only half that rate, it would still amount to 4% of the existing inventory, so EPA anticipates that at least that much inventory could be available for critical uses during 2013.

EPA is also seeking comment on using the above approach but allocating 0% from existing stocks for 2013 in light of the withdrawal of iodomethane from the market. In March 2012, Arysta LifeScience, the manufacturer of iodomethane, suspended the sale of iodomethane across the United States. This alternative was registered for use in 48 states on strawberries, tomatoes, peppers, ornamentals, turf, orchard replant, forest nursery seedlings, and strawberry nurseries. Many users had been transitioning to this alternative since 2008, when the product was federally registered.

EPA believes that the unanticipated loss of this alternative could have increased demand for methyl bromide in 2012 from critical users. In comments to EPA's 2010 CUE Rule, Arysta provided data that 97,341 kg of iodomethane was used in 2008 and 177,991 kg was used in 2009. They calculated this to be equivalent to approximately 5,000 and 10,000 acres respectively. They also anticipated sales of 250,000 kg in 2010, which would be equivalent to 650 MT of methyl bromide on 13,500 acres.

In 2012, critical users may seek additional methyl bromide from pre-phaseout inventory than in previous years. The 2012 critical uses include all of the registered uses of iodomethane except for turf. Growers in Florida and the Southeastern United States

were using iodomethane on tomatoes, peppers, strawberries, and ornamentals. While many of these sectors could use alternatives other than iodomethane, such as the UGA 3-way, the unexpected loss of iodomethane could lead to growers using inventory methyl bromide for this season. The historical trend described below, in which no more than 70% of the CSAs allocated in one year had ever been expended, may not hold true for 2012. However, under the framework, the use of inventory for critical uses cannot exceed the total CSA allocation of 263 MT in 2012.

EPA also does not believe that the withdrawal of iodomethane will increase demand for pre-phaseout inventory from non-critical uses in 2012. Under the reregistration decision for methyl bromide, seven non-critical uses remain on the pre-plant methyl bromide labels. These non-critical uses can continue to use methyl bromide but are restricted to pre-phaseout inventory. The uses are caneberries, fresh market tomatoes grown in California, fresh market peppers grown in California, Vidalia onions grown in Georgia, ginger grown in Hawaii, soils on golf courses and athletic/recreational fields for resurfacing/replanting of turf, and tobacco seedling trays. See 76 FR 7200 (February 9, 2011). Collectively they are referred to as "Group II uses." Of the Group II uses, iodomethane was only registered for use on fresh market tomatoes grown in California, fresh market peppers grown in California, and turf. Iodomethane was not used in California and EPA suspects it was not widely used on turf since that sector did not submit an application for a critical use exemption for 2015. EPA is seeking comment and additional data on whether the loss of iodomethane will limit the availability of inventory in 2013.

EPA understands that changes in the status of methyl bromide alternatives can occur, and that these changes may expand or contract the list of existing options. We also understand that the sudden change in the availability of iodomethane has created near-term difficulties for growers in transition. As noted above, EPA has taken this change in circumstance into account in proposing to allocate the full amount of CUE authorized by the Parties in 2013. EPA is also requesting comment on a range of potential amounts for the CSA allocation, recognizing that past CUE rules may have overestimated the amount of stocks that are available to critical users. Finally, EPA requests comment on and relevant data to support consideration of other potential mechanisms within the Clean Air Act or other statutory authorities that the EPA could use to respond to unforeseen or emergency situations.

Therefore, under this proposed approach, the agency is proposing to allocate 5% of existing inventory, or 62,444 kg of critical stock allowances for 2013. EPA solicits comment on whether 5% is the appropriate amount, or whether a higher or lower figure would be appropriate. EPA specifically seeks comment on allocating 0 kg from stocks under this approach. In considering the possibility of an allocation for CSAs set at 0 kg, EPA is particularly interested in comments from critical stock allowance holders who would be barred under the existing framework from selling inventory to critical users in 2013. EPA is interested in learning whether an allocation at or close to 0 kg would prevent the drawdown of stocks or prevent the fulfillment of contracts or commitments to sell pre-phaseout inventory in 2013. EPA is interested in learning whether critical users who in the past have accessed allocations of CSAs would still be able to access methyl bromide, either through the conversion of CUAs to CSAs, or from other sources. Finally,

EPA is interested in comment on the restriction in the framework rule that limits the sale of inventory to critical uses through the CSA allocation, see 40 CFR 82.4(p), whether that restriction should be lifted, and to what extent reporting and recordkeeping requirements should be adjusted were the restriction lifted.

Option 2: Framework Approach

EPA also solicits comment on whether it should retain for 2013 its recent approach to calculating "available stocks" using the formula $AS_{CP} = ES_{PP} - D_{PP} - SCF_{CP}$. EPA calculates through this formula that there will be 221,495 kg of "available stocks" on January 1, 2013. Under this approach, EPA would allocate 221,495 kg of CSAs for 2013.

The first step in the formula is to estimate the drawdown of stocks during 2012. To do so, EPA adds the estimated amount of CSAs that will be expended in 2012 plus the estimated amount of methyl bromide that will be used in 2012 for non-critical uses. EPA believes that this is a better practice than using a simple linear fit estimation, which was the approach EPA used in the first few years it conducted this analysis. A linear estimate would have projected that no methyl bromide would remain in inventory at the beginning of 2013. Furthermore, this estimate does not consider that the use of inventory on critical uses is limited by the allocation of CSAs.

The first element of the drawdown estimate is the amount of inventory used in 2012 on critical uses. This can be no more than the number of CSAs EPA allocated in the 2012 CUE Rule, which is 263,082 kg. As discussed in the Technical Support Document, on average only 59% of the CSAs allocated for a control period are reported as sold in that control period. To estimate the number of expended CSAs in 2012, EPA

conservatively assumes that 70% of the CSAs allocated for 2012 will be sold. This amount is greater than any year's use of CSA allocations, however EPA notes below that the loss of iodomethane may result in greater demand for inventory in 2012 than past years. Thus, EPA estimates that 184,157 kg of inventory will be sold for critical uses in 2012.

The second element of the drawdown estimate is the amount of inventory used in 2012 on Group II and non-critical uses. Group II uses are seven non-critical uses that remain on the pre-plant methyl bromide labels. Post-harvest labels have not been revised yet to implement the terms of the reregistration decision concerning use of methyl bromide for commodity fumigation and thus the universe of labeled post-harvest uses remains broader.

There is no clear trend in the pattern of usage for non-critical uses. EPA therefore is estimating the amount of sales for non-critical uses in 2012 by analyzing the percent of the total inventory used each year for this purpose. For example, in 2010, 36% of the total start of year inventory was sold for non-critical uses. On a weight basis, this was equal to 647 MT. In 2006, much more inventory (on a weight basis) was sold for non-critical uses, 1,249 MT, but this comprised only 16% of the total start of year inventory that year. EPA does not believe that an average of the amounts sold (on a weight basis) in 2006-2011 for all non-critical uses is accurate because the inventory has declined. For example, the 1,249 MT of inventory was sold in 2006 for non-critical uses is unlikely to provide an accurate description of the drawdown in 2012, even when averaged with other years' data, because there was only 1,249 MT of inventory at the beginning of 2012. EPA therefore is analyzing the drawdown on a proportional basis rather than a strictly weight

basis. While the average proportion is 17%, EPA is conservatively using the highest proportion. Therefore, EPA estimates that 36% of the total start of year inventory would be used for non-critical uses in 2012. Thus, EPA estimates that 449,595 kg of inventory will be sold for Group II uses in 2012. EPA believes that this estimate is conservative because the analysis encompasses years where the use of inventory included all non-critical uses, and was not restricted to Group II uses. These data are contained in EPA's annual Accounting Frameworks submitted to UNEP and summarized in the technical support document in the docket.

In summary, EPA estimates the drawdown of inventory in 2012 as the sum of 1) the use of CSAs in 2012 and 2) the estimate for non-critical uses in 2012. Using this method, EPA conservatively projects that the pre-phaseout methyl bromide inventory will be drawn down by 633,759 kg (184,157 + 449,595) during 2012. This would result in a pre-phaseout inventory declining from 1,248,876 kg on January 1, 2012, to 615,124 kg on January 1, 2013. EPA welcomes comment on this proposed method of calculating inventory drawdown. If EPA utilizes this approach in the final rule and receives actual end-of-year reported data on inventory levels before this rule is finalized, EPA may substitute that data for this estimate.

The next element in the calculation of available stocks is the supply chain factor (SCF). The SCF represents EPA's technical estimate of the amount of pre-phaseout inventory that would be adequate to meet a need for critical use methyl bromide after an unforeseen domestic production failure. As described in the 2008 CUE Rule, and the Technical Support Document contained in the docket to this rule, EPA estimates that it would take 15 weeks for significant imports of methyl bromide to reach the U.S in the

event of a major supply disruption. Consistent with the regulatory framework used in previous CUE allocation rules, the SCF for 2013 conservatively reflects the effect of a supply disruption occurring in the peak period of critical use methyl bromide production, which is the first quarter of the year. While this 15-week disruption is based on shipping capacity and does not change year to year, other inputs to EPA's analysis do change each year including the total U.S. and global authorizations for methyl bromide and the average seasonal production of critical use methyl bromide in the United States. Using updated numbers, EPA estimates that critical use production in the first 15 weeks of each year (the peak supply period) currently accounts for approximately 70% of annual critical use methyl bromide demand. EPA, therefore, estimates that the peak 15-week shortfall in 2013 could be 394 MT.

As EPA stated in previous CUE Rules, the SCF is not a "reserve" of methyl bromide but is merely an analytical tool used to provide greater transparency regarding how the Agency determines CSA amounts. Further general discussion of the SCF is in the final 2008 CUE rule (72 FR 74118, December 28, 2007) and further detail about the analysis used to derive the value for the 2013 supply chain factor is provided in the Technical Support Document available on the public docket for this rulemaking.

Using the formula $AS_{2013} = ES_{2012} - D_{2012} - SCF_{2013}$, EPA estimates under the framework approach that there will be 221,495 kg of pre-phaseout stocks of methyl bromide "available" to be allocated in 2013. (221,495 = 1,248,876 – 633,759 – 393,628). EPA welcomes comment on this approach to determining the level of available stocks and the critical stock allowance allocation for 2013.

In summary, EPA is proposing for 2013 a new approach for allocating amounts authorized for critical uses between CSAs and CUAs, by allocating CSAs as a percentage of the existing inventory. In particular, EPA is proposing to allocate CSAs in an amount equal to 5% of the 2012 reported inventory, or 62,444 kg. EPA seeks comment on a range of values for the allocation of CSAs, given the loss of iodomethane. EPA particularly solicits comment on allocating 0 kg of CSAs. EPA is also seeking comment on using the existing framework to calculate the amount of "available stocks" in 2013. EPA estimates the CSA allocation would be 221,495 kg under this approach.

As in past years, EPA would allocate CSAs based on each company's proportionate share of the aggregate inventory. In 2006, the United States District Court for the District of Columbia upheld EPA's treatment of company-specific methyl bromide inventory information as confidential. NRDC v. Leavitt, 2006 WL 667327 (D.D.C. March 14, 2006). Therefore, the documentation regarding company-specific allocation of CSAs is in the confidential portion of the rulemaking docket and the individual CSA allocations are not listed in the table in 40 CFR 82.8(c)(2). EPA will inform listed companies of their CSA allocations in a letter following publication of the final rule.

2. Approach for Determining New Production and Import Allowances

For 2013, EPA is proposing to generally apply the existing framework established in the Framework Rule. Under this approach, the amount of new production would equal the total amount authorized by the Parties to the Montreal Protocol in Decision XXIII/4, minus the CSA amount detailed above, minus any reductions for carryover and the uptake of alternatives. As explained above, EPA has considered a number of factors in

determining the total allocation, including the loss of the alternative iodomethane, and is not proposing to reduce the total allocation below the amount approved in Decision XXIII/4. Applying this established approach, EPA is proposing to exempt limited amounts of new production and import of methyl bromide for critical uses in 2013 such that the total authorization equals 562,326 kg. Because EPA is taking comment on a range of values for the critical stock allocation, there would be a corresponding range of values for the new production/import amount from to 340,831 kg to 562,326 kg. EPA is proposing an approach that would result in an allocation of 499,882 kg. EPA is taking comment on this approach.

Carryover Material The Parties in paragraph 6 of Decision XXIII/4 "urge parties operating under critical-use exemptions to put in place effective systems to discourage the accumulation of methyl bromide produced under the exemption." As discussed in the Framework Rule, EPA regulations prohibit methyl bromide produced or imported after January 1, 2005, under the critical use exemption being added to the existing pre-2005 inventory. Quantities of methyl bromide produced, imported, exported, or sold to end-users under the critical use exemption in a control period must be reported to EPA the following year. EPA uses these reports to calculate the amount of methyl bromide produced or imported under the critical use exemption, but not exported or sold to end-users in that year. EPA deducts an amount equivalent to this "carryover" from the total level of allowable new production and import in the year following the year of the data report. Carryover material (which is produced using critical use allowances) is not included in EPA's definition of existing inventory (which applies to pre-2005 material)

because this would lead to a double-counting of carryover amounts, and a double reduction of critical use allowances (CUAs).

All critical use methyl bromide that companies reported to be produced or imported in 2011 was sold to end users. The information reported to EPA is that 1,499 MT of critical use methyl bromide was produced or imported in 2011. Slightly more than the amount produced or imported was actually sold to end-users. This additional amount was from distributors selling material that was carried over from the prior control period. Using the existing framework, EPA is proposing to apply the carryover deduction of 0 kg to the new production amount. EPA's calculation of the amount of carryover at the end of 2011 is consistent with the method used in previous CUE rules, and with the method agreed to by the Parties in Decision XVI/6 for calculating column L of the U.S. Accounting Framework. Past U.S. Accounting Frameworks, including the one for 2011, are available in the public docket for this rulemaking.

Uptake of Alternatives Under the existing framework, EPA considers data on the availability of alternatives that it receives following submission of each nomination to UNEP. In previous rules EPA has reduced the total CUE amount when a new alternative has been registered. Because EPA determines the CSA allocation separately, any reduction in the total amount has been reflected in a corresponding reduction in the allocation for new production/import. However, where an alternative is withdrawn, EPA cannot propose to increase the total CUE amount above the amount authorized by the Parties.

A development since the USG submitted the 2013 CUN is that Dimethyl Disulfide (DMDS) has been registered in additional states. In July 2010, EPA registered

DMDS to control nematodes, weeds, and pathogens in tomatoes, peppers, eggplants, curcurbits, strawberries, ornamentals and forest nursery seedlings, and onions. The CUN considered only a limited uptake in 2013. At that time only a few states had registered DMDS and it was not registered in either California or Florida. Twenty-four states have now registered DMDS, including Georgia and Florida.

EPA is proposing not to make a reduction to the new production/import allocation based on these additional state registrations. As discussed above, over 90% of the amount authorized is for critical uses in California, which has not yet registered DMDS. EPA anticipates that the uptake of DMDS in the Southeast will therefore not significantly affect total demand for critical use methyl bromide.

EPA is not proposing to make any other modifications for alternatives. Transition rates for other alternatives have already been applied for authorized 2013 critical use amounts through the nomination and authorization process. EPA will consider new data received during the comment period and continues to gather information about methyl bromide alternatives through the CUE application process, and by other means. EPA also continues to support research and adoption of methyl bromide alternatives, and to request information about the economic and technical feasibility of all existing and potential alternatives.

Allocation Amounts EPA is proposing to allocate 2013 critical use allowances for new production or import of methyl bromide equivalent to 499,882 kg. Because EPA is proposing a range of approaches for the critical stock allocation, EPA is taking comment on the corresponding range of values for the new production/import amount from to 340,831 kg to 562,326 kg.

EPA is proposing to allocate allowances to the four companies that hold baseline allowances. The proposed allocation, as in previous years, is in proportion to those baseline amounts, as shown in the proposed changes to the table in 40 CFR 82.8(c)(1). Paragraph 3 of Decision XXIII/4 states "that parties shall endeavor to license, permit, authorize or allocate quantities of methyl bromide for critical uses as listed in table A of the annex to the present decision." This is similar to language in prior Decisions authorizing critical uses. These Decisions call on Parties to endeavor to allocate critical use methyl bromide on a sector basis. The Framework Rule proposed several options for allocating critical use allowances, including a sector-by-sector approach. The agency evaluated various options based on their economic, environmental, and practical effects. After receiving comments, EPA determined that a lump-sum, or universal, allocation, modified to include distinct caps for pre-plant and post-harvest uses, was the most efficient and least burdensome approach that would achieve the desired environmental results, and that a sector-by-sector approach would pose significant administrative and practical difficulties. For the reasons discussed in the preamble to the 2009 CUE rule (74 FR 19894), the agency believes that under the approach adopted in the Framework Rule, the actual critical use will closely follow the sector breakout listed in the Parties' decisions.

F. The Criteria in Decisions IX/6 and Ex. I/4

Paragraphs 1 and 4 of Decision XXIII/4 request Parties to ensure that the conditions or criteria listed in Decisions Ex. I/4 and IX/6, paragraph 1, are applied to exempted critical uses for the 2013 control period. A discussion of the agency's application of the criteria in paragraph 1 of Decision IX/6 appears in sections V.A., V.D.,

and V.E. of this preamble. In section V.D. the agency solicits comments on the technical and economic basis for determining that the uses listed in this proposed rule meet the criteria of the critical use exemption. The CUNs detail how each proposed critical use meets the criteria listed in paragraph 1 of Decision IX/6, apart from the criterion located at (b)(ii), as well as the criteria in paragraphs 5 and 6 of Decision Ex. I/4.

The criterion in Decision IX/6(1)(b)(ii), which refers to the use of available stocks of methyl bromide, is addressed in section V.E. of this preamble. The agency has previously provided its interpretation of the criterion in Decision IX/6(1)(a)(i) regarding the presence of significant market disruption in the absence of an exemption, and EPA refers readers to the 2006 CUE final rule (71 FR 5989, February 6, 2006) as well as to the memo on the docket "Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America" for further elaboration.

The remaining considerations, including the lack of available technically and economically feasible alternatives under the circumstance of the nomination; efforts to minimize use and emissions of methyl bromide where technically and economically feasible; the development of research and transition plans; and the requests in Decision Ex. I/4(5) and (6) that Parties consider and implement MBTOC recommendations, where feasible, on reductions in the critical use of methyl bromide and include information on the methodology they use to determine economic feasibility, are addressed in the nomination documents.

Some of these criteria are evaluated in other documents as well. For example, the United States has further considered matters regarding the adoption of alternatives and research into methyl bromide alternatives, criterion (1)(b)(iii) in Decision IX/6, in the

development of the National Management Strategy submitted to the Ozone Secretariat in December 2005, updated in October 2009, as well as in ongoing consultations with industry. The National Management Strategy addresses all of the aims specified in Decision Ex.I/4(3) to the extent feasible and is available in the docket for this rulemaking.

There continues to be a need for methyl bromide in order to conduct the research required by Decision IX/6. A common example is an outdoor field experiment that requires methyl bromide as a standard control treatment with which to compare the trial alternatives' results. As discussed in the preamble to the 2010 CUE rule (75 FR 23179, May 3, 2010), research is a key element of the critical use process. Research on the crops shown in the table in Appendix L to subpart A remains a critical use of methyl bromide. While researchers may continue to use newly produced material for field, post-harvest, and emission minimization studies requiring the use of methyl bromide, EPA encourages researchers to use pre-phaseout inventory purchased through the expenditure of CSAs. EPA also encourages distributors to make inventory available to researchers, to promote the continuing effort to assist growers to transition critical use crops to alternatives.

G. Emissions Minimization

Previous decisions have stated that critical users shall employ emission minimization techniques such as virtually impermeable films, barrier film technologies, deep shank injection and/or other techniques that promote environmental protection, whenever technically and economically feasible. EPA developed a comprehensive strategy for risk mitigation through the 2006 Reregistration Eligibility Decision (RED) for methyl bromide, which is implemented through restrictions on how methyl bromide

products can be used. This approach requires that methyl bromide labels include directions that treated sites be tarped except for California orchard replant where EPA instead requires deep (18 inches or greater) shank applications. The RED also incorporated incentives for applicators to use high-barrier tarps, such as virtually impermeable film (VIF), by allowing smaller buffer zones around those sites. In addition to minimizing emissions, use of high-barrier tarps has the benefit of providing pest control at lower application rates. The amount of methyl bromide nominated by the United States reflects the lower application rates necessary when using high-barrier tarps, where such tarps are allowed.

EPA will continue to work with the U.S. Department of Agriculture – Agricultural Research Service (USDA-ARS) and the National Institute for Food and Agriculture (USDA-NIFA) to promote emission reduction techniques. The federal government has invested substantial resources into best practices for methyl bromide use, including emission reduction practices. The Cooperative Extension System, which receives some support from USDA-NIFA provides locally appropriate and project focused outreach education regarding methyl bromide transition best practices. Additional information on USDA research on alternatives and emissions reduction can be found at: http://www.ars.usda.gov/research/programs/programs.htm?NP_CODE=308 and http://www.csrees.usda.gov/fo/methylbromideicgp.cfm.

Users of methyl bromide should continue to make every effort to minimize overall emissions of methyl bromide to the extent consistent with State and local laws and regulations. EPA also encourages researchers and users who are using such

techniques to inform EPA of their experiences and to provide such information with their critical use applications.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this proposal is a "significant regulatory action." This action is likely to result in a rule that may raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to interagency recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The application, recordkeeping, and reporting requirements have already been established under previous critical use exemption rulemakings and this action does not propose to change any of those existing requirements. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060-0482. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the

Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's regulations at 13 CFR 121.201 (see Table below); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Category	**NAICS code**	**SIC code**	**NAICS Small business size standard (in number of employees or millions of dollars)**
Agricultural production	1112- Vegetable and Melon farming 1113- Fruit and Nut Tree Farming 1114- Greenhouse, Nursery, and Floriculture Production	0171- Berry Crops 0172- Grapes 0173- Tree Nuts 0175- Deciduous Tree Fruits (except apple orchards and farms) 0179- Fruit and Tree Nuts, NEC 0181- Ornamental Floriculture and Nursery Products 0831- Forest Nurseries and Gathering of Forest Products	$0.75 million
Storage Uses	115114- Postharvest Crop activities (except Cotton Ginning) 311211- Flour Milling 311212- Rice Milling 493110- General Warehousing and Storage	 2041- Flour and Other Grain Mill Products 2044- Rice Milling 4225- General Warehousing and Storage	$7 million 500 employees 500 employees $25.5 million

	493130- Farm Product Warehousing and Storage	4221- Farm Product Warehousing and Storage	$25.5 million
Distributors and Applicators	115112- Soil Preparation, Planting and Cultivating	0721- Crop Planting, Cultivation, and Protection	$7 million
Producers and Importers	325320- Pesticide and Other Agricultural Chemical Manufacturing	2879- Pesticides and Agricultural Chemicals, NEC	500 employees

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This proposed rule would only affect entities that applied to EPA for an exemption to the phaseout of methyl bromide. In most cases, EPA received aggregated requests for exemptions from industry consortia. On the exemption application, EPA asked consortia to describe the number and size distribution of entities their application covered. EPA estimated that 3,218 entities petitioned EPA for an exemption for the 2005 control period. EPA revised this estimate in 2011 down to 1,800 end users of critical use methyl bromide. EPA believes that the number continues to decline as growers cease applying for critical uses. Since many applicants did not provide information on the distribution of sizes of entities covered in their applications, EPA estimated that, based on the above definition, between one-fourth and one-third of the entities may be small businesses. In addition, other categories of affected entities do not contain small businesses based on the above description.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse

economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." (5 U.S.C. §§ 603-604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves a regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since this rule would allow the use of methyl bromide for approved critical uses after the phaseout date of January 1, 2005, this action would confer a benefit to users of methyl bromide. EPA estimates in the Regulatory Impact Assessment found in the docket to this rule that the reduced costs resulting from the de-regulatory creation of the exemption are approximately $22 million to $31 million on an annual basis (using a 3% or 7% discount rate respectively). We have therefore concluded that this proposed rule would relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Instead, this action would provide an exemption for the manufacture and use of a phased out compound and would not impose any new requirements on any entities. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule is expected to primarily affect producers, suppliers, importers, and exporters and users of methyl bromide. Thus, Executive Order 13132 does not apply to this proposed rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule does not significantly or uniquely affect the communities of Indian tribal governments nor does it impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action. EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order No. 13045: Protection of Children from Environmental Health and Safety Risks

EPA interprets EO 13045 (62 F.R. 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the

regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This proposed rule does not pertain to any segment of the energy production economy nor does it regulate any manner of energy use. Therefore, we have concluded that this proposed rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations, because it affects the level of environmental protection equally for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Any ozone depletion that results from this proposed rule will impact all affected populations equally because ozone depletion is a global environmental problem with environmental and human effects that are, in general, equally distributed across geographical regions in the United States.

List of Subjects in 40 CFR Part 82

Environmental protection, Chemicals, Exports, Imports, Ozone depletion.

Dated: December 7, 2012

Lisa P. Jackson,
Administrator.

For the reasons stated in the preamble, 40 CFR Part 82 is proposed to be amended as follows:

PART 82- PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671-7671q.

2. Amend §82.8 by revising the table in paragraph (c)(1) and by revising paragraph

(c)(2).

§ 82.8 Grant of essential use allowances and critical use allowances.

* * * * *

(c) * * *

(1) * * *

Company	**2013 Critical use allowances for pre-plant uses* (kilograms)**	**2013 Critical use allowances for post-harvest uses* (kilograms)**
Great Lakes Chemical Corp. A Chemtura Company	287,633	16,145
Albemarle Corp.	118,281	6,639
ICL-IP America	65,365	3,669
TriCal, Inc.	2,035	114
*Total***	*473,315*	*26,567*

* For production or import of Class I, Group VI controlled substance exclusively for the Pre-Plant or Post-Harvest uses specified in appendix L to this subpart.

** Due to rounding, numbers do not add exactly.

(2) Allocated critical stock allowances granted for specified control period. The following companies are allocated critical stock allowances for 2013 on a pro-rata basis in relation to the inventory held by each.

Company		
Albemarle	Degesch America, Inc.	Prosource One
Bill Clark Pest Control, Inc.	Helena Chemical Co.	Trical Inc.
Burnside Services, Inc.	ICL-IP America	Trident Agricultural Products
Cardinal Professional Products	Industrial Fumigant Company	TriEst Ag Group, Inc.
Chemtura Corp.	Pacific Ag Supplies Inc.	Univar
Crop Production Services	Pest Fog Sales Corp.	Western Fumigation
TOTAL –62,444 kilograms		

3. Appendix L to Subpart A is revised to read as follows:

APPENDIX L TO SUBPART A OF PART 82 – APPROVED CRITICAL USES AND LIMITING CRITICAL CONDITIONS FOR THOSE USES FOR THE 2013 CONTROL PERIOD

Column A	Column B	Column C
Approved Critical Uses	**Approved Critical User and Location of Use**	**Limiting Critical Conditions** that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
PRE-PLANT USES		
Cucurbits	Georgia growers on fewer than 10 acres	Moderate to severe yellow or purple nutsedge infestation Moderate to severe soilborne disease infestation Moderate to severe root knot nematode infestation
Eggplant	(a) Florida growers	Moderate to severe yellow or purple nutsedge infestation Moderate to severe soilborne disease infestation Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation

	(b) Georgia growers on fewer than 10 acres	Moderate to severe yellow or purple nutsedge infestation Moderate to severe nematode infestation Moderate to severe pythium collar, crown and root rot Moderate to severe southern blight infestation Restrictions on alternatives due to karst topographical features
Nursery Stock (Fruit, Nut, Flower)	Members of the California Association of Nursery and Garden Centers representing Deciduous Tree Fruit Growers	Moderate to severe nematode infestation Medium to heavy clay soils Local township limits prohibiting 1,3-dichloropropene
Orchard Replant	California stone fruit, table and raisin grape, wine grape, walnut, and almond growers	Moderate to severe nematode infestation Moderate to severe soilborne disease infestation Replanted orchard soils to prevent orchard replant disease Medium to heavy soils Local township limits prohibiting 1,3-dichloropropene
Ornamentals	(a) California growers	Moderate to severe soilborne disease infestation Moderate to severe nematode infestation Local township limits prohibiting 1,3-dichloropropene
	(b) Florida growers	Moderate to severe weed infestation Moderate to severe soilborne disease infestation Moderate to severe nematode infestation Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation
Peppers	(a) Florida growers	Moderate to severe yellow or purple nutsedge infestation Moderate to severe soilborne disease infestation Moderate to severe nematode infestation Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation
	(b) Georgia growers on fewer than 10 acres	Moderate to severe yellow or purple nutsedge infestation Moderate to severe nematode infestation, or moderate to severe pythium root and collar rots Moderate to severe southern blight infestation, crown or root rot Restrictions on alternatives due to karst topographical features
Strawberry Fruit	California growers	Moderate to severe black root rot or crown rot Moderate to severe yellow or purple nutsedge infestation Moderate to severe nematode infestation Local township limits prohibiting 1,3-dichloropropene Time to transition to an alternative
Strawberry Nurseries	California growers	Moderate to severe soilborne disease infestation Moderate to severe yellow or purple nutsedge infestation Moderate to severe nematode infestation
Tomatoes	(a) Florida growers	Moderate to severe yellow or purple nutsedge infestation Moderate to severe soilborne disease infestation Moderate to severe nematode infestation Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation
	(b) Georgia growers on fewer than 10 acres	Moderate to severe yellow or purple nutsedge infestation Moderate to severe soilborne disease infestation Moderate to severe nematode infestation Restrictions on alternatives due to karst topographical features

POST-HARVEST USES		
Food Processing	(a) Rice millers in the U.S. who are members of the USA Rice Millers Association	Moderate to severe beetle, weevil, or moth infestation Presence of sensitive electronic equipment subject to corrosion Time to transition to an alternative
	(b) Pet food manufacturing facilities in the U.S. who are members of the Pet Food Institute	Moderate to severe beetle, moth, or cockroach infestation Presence of sensitive electronic equipment subject to corrosion Time to transition to an alternative
	(c) Members of the North American Millers' Association in the U.S.	Moderate to severe beetle infestation Presence of sensitive electronic equipment subject to corrosion Time to transition to an alternative
Commodities	California entities storing walnuts, dried plums, figs, raisins, and dates (in Riverside county only) in California.	Rapid fumigation required to meet a critical market window, such as during the holiday season
Dry Cured Pork Products	Members of the National Country Ham Association and the Association of Meat Processors, Nahunta Pork Center (North Carolina), and Gwaltney and Smithfield Inc.	Red legged ham beetle infestation Cheese/ham skipper infestation Dermested beetle infestation Ham mite infestation

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